

OPINION
67-231

April 13, 1967 (OPINION)

Mr. C. R. Krogstad

Dairy Commissioner

RE: State Milk Board - Members - Qualifications

This is in reply to your letter of April 10, 1967, relative to House Bill 596 enacted by the 1967 Legislative Assembly. You state the following facts and questions:

House Bill 596 relating to the establishing of a Milk Board to regulate prices and trade practices, page 4, section 4, states in part:

'No appointee shall have held elective or appointive public office during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk stabilization board; * * *'

The selection of a suitable board member who qualifies for these appointments is creating a problem since many individuals are members of boards, commissions, etc. We would appreciate your opinion as to what constitutes a 'public office' position.

In your opinion, if an individual has held any of the following positions, must they be disqualified for recommendation for appointments to the Milk Stabilization Board?

1. City council member
2. County commissioner
3. Member of a City Civil Service Board by appointment
4. County chairman of a political party"

The term "public office" is not defined by the Act. Section 1-02-01 of the North Dakota Century Code provides that words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears or unless they are defined by statute. The legal references are replete with cases defining this term for special purposes. However, in determining the meaning of words "public office" and "public officer", each case must be determined from the pertinent facts, including consideration of intention and subject matter of the enactment of the statute or the adoption of the constitutional provision. See, e.g., State ex rel. Scobee v. Meriwether, 355 Mo. 1217, 200 S.W.2d. 340.

As used in the statute quoted above, the term "public office" is apparently used in a broad sense since it refers to "elective or appointive" public office and the statute does not limit the office

to state, county, etc. The apparent intent of the provision was to prevent any person from influencing or being influenced by reason of his office with respect to any of the matters to be considered by the Milk Stabilization Board. We shall consider the 4 officials referred to in your letter separately.

1. City Council Member. There would appear to be no doubt but that a city alderman (council member) would hold a public office within the meaning of the above cited statutory provision. He is elected to the office. See Chapter 40-08 of the North Dakota Century Code. See also, e.g., *Smith v. Reid*, 244 NW 353, 60 SD 311, holding that office of city commissioner is a public office.
2. County Commissioner. The same rationale as applies to a city council member would also appear to apply to the office of county commissioner. Both offices are elective offices established by the Legislature and/or the North Dakota Constitution. See section 172 of the North Dakota Constitution and Chapter 11-11 of the North Dakota Century Code.
3. Member of a City Civil Service Board by appointment. It is to be noted that the fact an official is appointed rather than elected is not decisive in this matter, since the statute refers to either elected or appointed officials. This is an office authorized by the Legislature. See Chapter 40-44 of the North Dakota Century Code. While the cases indicate that positions under city or state civil service laws are not "offices" in the strict sense (see *McKinley v. City of Chicago*, 291 Ill. App., 571, 10 N.E.2d. 689), the position of civil service commissioner would appear to be a public office.
4. County Chairman of a Political Party. The cases concerning this matter appear to hold that a person holding an office in a political party is not a public officer, generally (see, e.g., *Sullivan v. Board of Sup'rs. of Monroe County*, 24 Misc. 2d. 310, 200 NYS 2d. 218), although some hold such office is a public office for terms of contesting election thereto, etc. (See *State v. Republican State Central Committee of Louisiana*, 192 So. 740.)

The Supreme Court of North Dakota has held that a public office is a public position to which a portion of the sovereignty of the country, either legislative, executive, or judicial, attaches for the time being, and which is exercised for the benefit of the public, and that the chairman of a state central committee political party possesses no such authority, and therefore is not a public officer. See *State ex rel. McArthur v. McLean*, 35 N.D. 203, 159 N.W. 847. The fact that emoluments are on a per meeting rather than annual or monthly salary basis would not affect our result in the usual instance.

Applying this definition and holding to the positions referred to in your letter, it is our opinion that a city council member, county commissioner and member of a city civil service board would be considered to hold an elective or appointive public office within the meaning of Section 4 of House bill 596. It is our further opinion that the county chairman of a political party would not be considered

as holding a public office within the meaning of said section.

HELGI JOHANNESON

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